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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/865,962	05/30/1997	JAKOB NIELSEN	2860-058	9129

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WASHINGTON, DC 20005-3096

EXAMINER

EDELMAN, BRADLEY E

ART UNIT	PAPER NUMBER
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2153

DATE MAILED: 02/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

08/865,962

Applicant(s)

NIELSEN, JAKOB

Examiner

Bradley Edelman

Art Unit

2153

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 40-65 is/are pending in the application.
- 4a) Of the above claim(s) 48-52, 59-63 and 65 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 40-47, 53-58 and 64 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

This action is in response to Applicant's election of claims 40-47, 53-58, and 64 for further examination. Non-elected claims 48-52, 59-63 and 65 are hereby withdrawn from consideration.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claim 57 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In considering claim 57, the phrase "when a process is unable to information" is not clear. It appears that the phrase is missing a verb before the word information. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United

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States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

2. Claims 40, 45-47, 53, 57, 58, and 64 are rejected under 35 U.S.C. 102(e) as being anticipated by Lee et al. (U.S. Patent No. 6,055,577, hereinafter "Lee").

In considering claims 40, 53, and 64, Lee discloses a computer apparatus, method, and computer program product for allocating communications bandwidth, comprising:

A computer having a communications interface for sending information over a communication link (server 200, col. 5, lines 13-22); and

A program running on said server computer and enabling the computer to reallocate bandwidth assigned to users connected to the server over the communications interface (col. 5, lines 26-27, 45-50; col. 7, lines 8-13, wherein clients are assigned a given bandwidth for communicating with the server, and the bandwidth is later re-arbitrated).

In considering claims 45, 46, and 57, Lee further discloses detecting when a user is unable to receive information at a rate allocated to that user, and as a result, excluding that user from reallocation of available bandwidth (col. 6, lines 14, 18, 25-27).

In considering claims 47 and 58, Lee further discloses that the bandwidth is reallocated dynamically (col. 7, lines 22-26, "bandwidth... is dynamically re-adjusted").

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 41-43, 54, and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee, in view of Milito (U.S. Patent No. 5,596,576).

In considering claims 41 and 54, Lee further discloses that the allocation is based on the amount of bandwidth requested at the server, as well as the types of data each user (i.e. client) is requesting from the server (col. 5, lines 26-34; col. 7, lines 8-13, 23-26, wherein allocation is adjusted according to certain non-real time processes). Lee also discloses that multiple users may request bandwidth allocation. However, Lee does not explicitly disclose that bandwidth allocation depends on the number of users requesting bandwidth from the file server. Nonetheless, controlling bandwidth allocation according to a number of users is well known, as evidenced by Milito. In a similar art, Milito discloses a system for allocating bandwidth to users accessing a resource over a network (col. 1, lines 32-37; col. 2, lines 44-46), wherein one method for allocating bandwidth (access rate) to users uses an algorithm that includes the number of users (col. 4, lines 20-28). Thus, given the teaching of Milito, a person having ordinary skill in the art would have readily recognized the desirability and advantages of basing the bandwidth allocation taught by Lee on the number of users, as taught by Milito, to provide a more efficient bandwidth allocation system (see discussion in Lee, cols. 1-2, and Milito, col. 1, lines 28-31 describing prior art inefficient systems). Therefore, it

would have been obvious to allocate bandwidth in the system taught by Lee according to the number of users, as taught by Milito.

In considering claims 42 and 54, Lee further discloses reallocating the resources in response to an event (col. 7, lines 23-26, wherein reallocation occurs in response to re-requesting the desired file).

In considering claim 43, Lee further discloses that the event is the reception of a GET request (col. 7, lines 23-26, wherein the reallocation occurs in response to a request to get the desired file).

4. Claims 44, and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Astle et al. (U.S. Patent No. 6,396,816, hereinafter "Astle").

In considering claims 44 and 56, although the system taught by Lee discloses substantial features of the claimed invention, it fails to disclose that each type of information has an associated priority. Nonetheless, associating a type of information with a priority for bandwidth allocation purposes is well known, as evidenced by Astle. In a similar art, Astle discloses a bandwidth allocation system in a network, wherein bandwidth is allocated to system users according to both data type and priority, wherein certain data types have specific priorities (col. 3, lines 34-37; col. 4, lines 4-10; col. 7, lines 7-11). Thus, given the teaching of Astle, a person having ordinary skill in the art would have readily recognized the desirability and advantages of allocating bandwidth

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to the different types of data (i.e. real-time and non-real-time data) in the system taught by Lee according to prioritized data type, as taught by Astle, to more efficiently allocate available bandwidth to better support real-time, interactive communications (see Astle, col. 2, lines 28-30). Therefore, it would have been obvious to allocate bandwidth in the system taught by Lee in the prioritized-type manner taught by Astle.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradley Edelman whose telephone number is (703) 306-3041. The examiner can normally be reached on Monday to Friday from 8:30 AM to 5:00 PM.

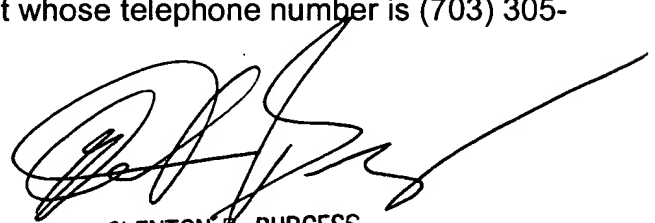
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on (703) 305-4792. The fax phone numbers for the organization where this application or proceeding is assigned are as follows:

For all After Final papers: (703) 746-7238.

For all other correspondences: (703) 746-7239.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

BE  
January 29, 2003



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